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FENNEMORE CRAIG
A Professional Corporation
Jay L. Shapiro (No. 014650)
Patrick J. Black (No. 017141)
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Telephone (602) 916-5000

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Arizona Corporation Commission

DOCKETED

JUL - 8 2004

Attorneys for Johnson Utilities Company

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES COMPANY'S
REQUEST FOR CLARIFICATION OR
MODIFICATION OF DECISION NO. 64062
PURSUANT TO A.R.S. § 40-252

DOCKET NO. WS-02987A-99-0583
WS-02987A-00-0618

**JOHNSON UTILITIES COMPANY'S
APPLICATION TO MODIFY DECISION
NO. 64062 (AMENDED)**

Johnson Utilities Company, Inc. ("JUC" or "Company") hereby requests that the Commission modify Decision No. 64062 (October 4, 2001) (the "Decision") and make permanent all portions of the extended CC&N granted to the Company in that order. The Commission has the authority to modify the Decision pursuant to A.R.S. § 40-252 and JUC respectfully suggests that it is in the public interest to grant the relief requested herein.

In support of its application, JUC states as follows:

1. JUC serves approximately 5,000 water and wastewater customers in Pinal County. Attached hereto as Exhibit 1 is a map illustrating the various CC&Ns the Commission has granted in the area over the past seven (7) years since the Company's original CC&N was granted on May 27, 1997.

2. The Decision granted JUC CC&N extensions for both water and wastewater service in portions of Pinal County. At the same time, the Commission granted similar relief to H2O Inc. ("H2O"), Diversified Water Utilities, Inc. ("Diversified") and Queen Creek Water

1 Company ("Queen Creek").¹ JUC was the only entity granted authority to provide wastewater
2 utility services in the areas subject to the Decision.

3 3. In the Decision, the Commission adopted Staff's recommendation and ordered that
4 that JUC file a request for "Certificate Review" within two years. Decision at ¶ 153. In addition,
5 the Commission directed Utilities Division Staff ("Staff") to file a report to the Commission
6 within 120 days after receiving the Company's request for a Certificate Review containing one of
7 the following three recommendations: 1) final approval for all parcels included in the CC&N; 2)
8 final approval for portions of the parcels approved with cancellation of the undeveloped portions
9 of the parcels; or 3) disapproval of the CC&N. *Id.*

10 4. JUC filed its request for Certificate Review on October 3, 2003 as required by the
11 Decision. Copy attached hereto as Exhibit 2. Staff has performed a physical plant inspection,
12 and JUC has provided Staff with information necessary to show that approximately \$9.5m has
13 been invested to serve the subject area parcels granted in the Decision.

14 5. In a May 17, 2004 report, Staff concluded that JUC is in compliance with all the
15 requirements and conditions from all applicable Commission decisions, including Decision Nos.
16 63960, 64062 and 65840 respectively. See Staff Report, Docket Nos. WS-02987A-99-0583, WS-
17 02987A-00-0618, *et al.* JUC is in compliance with all other Commission requirements, including
18 compliance with ADEQ, Pinal County and the Arizona Department of Water Resources rules and
19 regulations.

20 6. The development and construction of water and wastewater systems requires
21 considerable advanced and integrated planning, especially in areas of rapid growth and
22 development, like JUC's CC&N. The Commission has recognized the advantages and economies
23 of scale achieved by larger providers that utilize regionalized planning as a method for orderly

24 ¹ Color-coded in red are the parcels conditionally granted to JUC in the Decision for either water or wastewater
25 service, or both. The Company was granted a CC&N for wastewater in Parcel 2, but not water, and also provides
26 wastewater service in H20's water service area, represented on the map by the areas shaded in green (present CC&N)
and yellow (pending CC&N). The map also depicts existing and proposed water lines and water plants, in addition to
some of the 18-19 wells connected to the Company's water distribution system.

1 growth. See Decision No. 62993 (November 3, 2000), *In the Matter of the Arizona Corporation*
2 *Commission's own Motion to Establish the Commission Water Task Force*. Absent such an
3 approach, the risk of redundant infrastructure increases. Further, smaller utilities are finding it
4 more difficult and cost-prohibitive to comply with federal and state regulation, including safe
5 drinking water regulations that require substantial capital investment and increased operating
6 expenses. Such costs cannot be effectively recovered from a small customer base.

7 7. The project status and amount of plant investment associated with each of the
8 twenty-three (23) parcels included in the CC&N Extension's granted by the Decision is identified
9 and described in the attached Status Report recently provided to Staff. See Exhibit 3.² The Status
10 Report provides information on the amount and cost of water and wastewater infrastructure
11 already built to serve each of these expansion areas, as well as the current level of developer
12 activity associated with each parcel. Specifically, the Status Report indicates, among other
13 things:

- 14 a. For thirteen (13) of the twenty-one (21) parcels, PADs have been approved,
15 engineering has commenced and builders are performing due diligence.
- 16 b. For six (6) of the twenty-one (21) parcels, PADs have been approved,
17 engineering plans and plats have been approved, subdivisions are under
18 construction and model homes are currently open.
- 19 c. The remaining two (2) parcels contain lot splits and "wildcat" subdivisions,
20 with homes being sold and occupied in these areas.

21 8. The Company has invested \$9,451,816 to build infrastructure in Parcel Nos. 1
22 (Arizona Farms), 2 (Bella Vista Farms - wastewater only), 6 (Morning Sun Farms), 9 (Farley) and
23 11 (Circle Cross Ranch, west of the railroad). Status Report, Exhibit 3. The Morning Sun Farms
24 Lift-Station, 12" San Tan water line and San Tan heights well were constructed to also serve
25 Parcel Nos. 3 and 12. Similarly, the Pecan Creek wastewater treatment plant, Vineyard Road Lift
26 Station/water line and Circlecross wells 1&2 and water plant constructed in Parcel 11 will also
serve Parcel Nos. 5, 14, 15, 16, 17, 18, 20 and 22. *Id.* In summary, the Status Report illustrates

² Parcels 10 and 13 were withdrawn from the application.

1 JUC's approach to regionalized planning in an effort to provide its water and wastewater
2 customers safe, reliable and affordable utility service.

3 9. Real estate development involves a multi-step process in obtaining various state,
4 county and local regulatory and administrative approvals, planning for future water and
5 wastewater infrastructure to serve a rapidly growing population cannot be conducted in a vacuum.
6 Utilities themselves are often subject to various, and sometimes overlapping federal, state and
7 county approvals prior to constructing for and serving new developments. Staff recognized the
8 importance of advanced and integrated planning in a November 26, 2003 Staff Report³ on a
9 separate wastewater CC&N extension application. Staff writes:

10 Wastewater collection and treatment cannot be approached in a
11 fragmented manner. Instead, it demands an area wide planning
12 and coordination between publicly-owned treatment works, cities,
13 sanitary districts and privately-owned wastewater treatment plants.
14 Pursuant to that goal, Section 208 of the Federal Water Pollution
15 Control Act (Public Law 92-500) provided for the preparation of
16 'Certified Water Quality Management Plans' and the designation
17 of entities to manage sewage treatment facilities and sewage
18 collection systems in the respective planning area. The Central
19 Arizona Association of Governments ('CAAG') is the designated
20 water quality planning agency for the requested CC&N areas in
21 this application. CAAG has the authority to develop and approve
22 general wastewater plans which include land development policies,
23 service areas, objectives, principles and standards for local growth
24 and development...Critical weight was given to the planning
25 documents, because the applicant has requested wastewater service
26 territories, *in advance of much actual construction and service.*
[Emphasis added]

21 10. Likewise, the area under development often dictates the planning horizon for the
22 construction of water distribution facilities. In undeveloped or underdeveloped areas of rapid
23 growth, new infrastructure such as public roads and utility service lines is often constructed in an
24 ad-hoc or orderly manner. Because JUC's present service area and surrounding territory is
25

26 ³ Docket Nos. W-03576A-03-0586, SW-03575A-03-0586

1 experiencing rapid growth, the Company has taken a more regionalized approach in planning and
2 constructing for future development. The Company charges a hook-up fee to ensure that present
3 customers are shielded from funding new infrastructure, and the investment of approximately
4 \$9.5m to accommodate growth in the parcels granted to JUC by the Decision is part of the
5 Company's regionalized planning strategy, which will ultimately provide the Company's
6 customers with the benefits larger water and wastewater system providers can bring – reliability,
7 financial viability and economies of scale.

8 11. As builders and developers in the areas subject to the CC&N extensions granted in
9 the Decision conduct due diligence and prepare to begin constructing homes, the need to finalize
10 main extensions and continue the task of building utility infrastructure is readily apparent.
11 Unfortunately, the liability issues inherent in moving forward with development in the subject
12 parcels without assurance that the Company's CC&N will be made permanent places JUC and its
13 customers at risk. The Commission's decision that JUC will be the certificated service provider
14 will eliminate such risks, and will also provide regulatory certainty to the Commission and its
15 Staff, JUC, developers and other governmental regulatory bodies (i.e., CAAG, CAGRD and
16 DWR) involved in the planning of the area's water and wastewater infrastructure needs.

17 12. For the reasons stated herein, JUC asserts that a decision of the Commission
18 granting final approval for all parcels included in the CC&N extensions granted by Decision No.
19 64062 is in the public interest.

20 WHEREFORE, JUC respectfully requests the following:

21 A. That the Commission proceed to consider and act upon this Application as
22 expeditiously as possible and to schedule a hearing, if necessary, on this matter at the earliest
23 possible date;

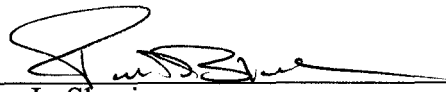
24 B. That upon completion of said hearing the Commission enter its order granting final
25 approval for all parcels included in the CC&N extensions granted by Decision No. 64062; and

26 C. That the Commission grant such other and further relief as may be appropriate

1 under the circumstances herein.

2 DATED this 8th day of July, 2004.

3 FENNEMORE CRAIG, P.C.

4
5 By: 
6 Jay L. Shapiro
7 Patrick J. Black
8 Attorney for Johnson Utilities Company

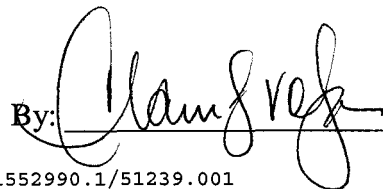
8 ORIGINAL and 15 copies of the
9 foregoing delivered this 8th
day of July, 2004, to:

10 Lynn Farmer, Chief ALJ
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

13 Ernest Johnson, Utilities Director
14 Utilities Division
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

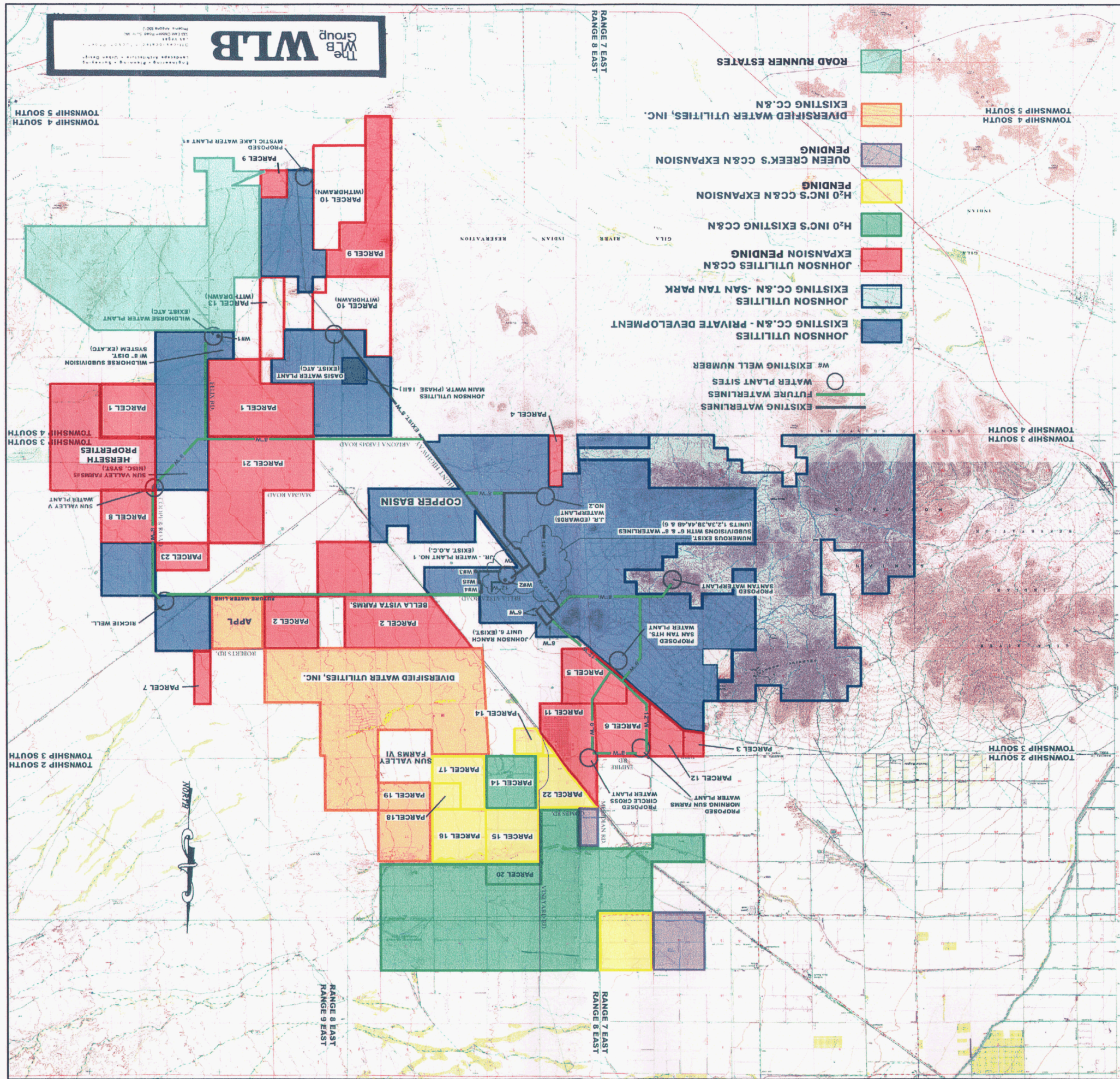
16 Christopher Kempley, Chief Counsel
17 Legal Division
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, Arizona 85007

19 Docket Control
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007

22
23 By: 
24 1552990.1/51239.001

EXHIBIT

1



EXHIBIT

2

CAPITOL BOND®

25% COTTON

LAW OFFICES
FENNEMORE CRAIG
A PROFESSIONAL CORPORATION RECEIVED

PATRICK J. BLACK

Direct Phone: (602) 916-5400

Direct Fax: (602) 916-5600

pblack@fclaw.com

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OFFICES IN:
PHOENIX, TUCSON,
NOGALES, AZ; LINCOLN, NE

AZ CORP COMMISSION
DOCUMENT CONTROL

3003 NORTH CENTRAL AVENUE
SUITE 2600
PHOENIX, ARIZONA 85012-2913
PHONE: (602) 916-5000
FAX: (602) 916-5999

October 3, 2003

BY HAND DELIVERY

Mr. Brian Bozzo, Compliance Manager
Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, Arizona 85007

Re: Johnson Utilities – WS-02987A-99-0583 and WS-02987A-00-0618
Commission Decision No. 64062 – CC&N Compliance Matters
Filing Approvals to Construct
Filing Approvals of Construction
Formal Request for Certificate Review

Dear Mr. Bozzo:

Pursuant to Commission Decision No. 64062 (October 4, 2001), as amended by Decision No. 65840 (April 22, 2003), Johnson Utilities Company ("Johnson Utilities" or "Company") hereby makes this compliance filing in accordance with the Commission's orders in the above-referenced matter.

Enclosed for your review are copies of all Certificates of Approval to Construct and Certificates of Approval of Construction for development in each of the respective approved parcels within Johnson Utilities' certificate of convenience and necessity ("CC&N") as authorized by Decision Nos. 64062 and 65840. The deadline for making this filing is October 4, 2003.

Additionally, the Company hereby formally requests Commission Staff ("Staff") to conduct a Certificate Review, as set forth in Findings of Fact, ¶153 of Decision No. 64062, which requires Johnson Utilities to file such a request within two years of the order. The deadline for making this request is October 4, 2003. Please contact either Brian Tompsett of Johnson Utilities, or myself, to coordinate any physical plant inspections Staff will require in preparing its report in this matter.

FENNEMORE CRAIG

BY HAND DELIVERY

Brian Bozzo, Compliance Manager
October 3, 2003
Page 2

Johnson Utilities has made two compliance filings since its CC&N was reinstated in Decision No. 65840. On June 27, 2003, the Company submitted documentation of its Pinal County Franchise for the extension area.

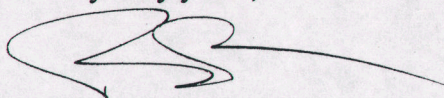
On August 6, 2003, the Company provided documentation of compliance with ADEQ regulations for its **water** system. However, Decision No. 65840 provides:

IT IS FURTHER ORDERED that JUC is to file documentation from the Arizona Department of Environmental Quality ("ADEQ") within 30 days of each year's anniversary date of *this Decision*, continuing perpetually until further order of the Commission, indicating compliance with ADEQ for each year.

This ordering paragraph amends Decision No. 64062, which previously required Johnson Utilities to file such ADEQ documentation by November 4, 2003. Although Johnson Utilities interprets this provision as now requiring the Company to file ADEQ documentation of compliance within thirty days of April 22 of each year¹, it intends to make a filing for its **wastewater** system by November 4, 2003.

Should you have any questions regarding this filing, please do not hesitate to call.

Very truly yours,



Patrick J. Black

Enclosures

cc: Ernest Johnson, Utilities Director (w/out encl.)
Christopher Kempley, Chief Counsel (w/out encl.)
Lyn Farmer, Chief Administrative Law Judge (w/out encl.)
Brian Tompsett, Johnson Utilities
Docket Control

1466791.1/51239.003

¹ Beginning in 2004, the Company will submit compliance filings within 30 days of April 22 of each year, until further order of the Commission.

EXHIBIT

3

Johnson Utilities Co.
Decision No. 64062

Project Name	Parcel Number	Project Status	Number of Customers	Amount of plant	Number of gallons sold	Amount of revenue (5)
Arizona Farms	Parcel 1	(1)	0	\$3,620,334	0	\$0
Bella Vista Farms	Parcel 2	(1)	0	\$1,938,413	0	\$0
Jorde Farms	Parcel 3	(1)	0	(A)	0	\$0
Whitehead	Parcel 4	(1)	0	(F)	0	\$0
Skyline	Parcel 5	(2)	2	(B)	12,506,000	\$46,900
Morning Sun Farms	Parcel 6	(2)	2	\$407,858	25,000,550	\$93,752
Shelton	Parcel 7	(4)	0	"(C) & (D)"	0	\$0
Various owners within Section 28	Parcel 8	(2)	0	(C)	0	\$0
Farley	Parcel 9	(1)	0	\$130,000	0	\$0
State of Az./Future Development Section	Parcel 10	(3)	0	N/A	0	\$0
Circle Cross Ranch (West of R.R.)	Parcel 11	(2)	4	\$3,355,211	17,133,193	\$64,248
Jorde/Morning Sun Farms	Parcel 12	(1)	1	(A)	70,963,613	\$266,114
BLM Property	Parcel 13	(3)	0	N/A	0	\$0
Johnson Farms (within Section 5)	Parcel 14	(1)	0	(B)	H2O Water Co.	H2O Water Co.
Pecan Estates	Parcel 15	(2)	0	(B)	H2O Water Co.	H2O Water Co.
The Home Place	Parcel 16	(1)	0	(B)	H2O Water Co.	H2O Water Co.
Ware Farms	Parcel 17	(1)	0	(B)	H2O Water Co.	H2O Water Co.
Various	Parcel 18	(1)	0	(B)	H2O Water Co.	H2O Water Co.
Various (Sewer Only)	Parcel 19	(4)	0	(C)	H2O Water Co.	H2O Water Co.
Pecan Ranch	Parcel 20	(2)	0	(B)	H2O Water Co.	H2O Water Co.
Dobson Farms	Parcel 21	(1)	0	(C)	0	\$0
Circle Cross Ranch (East of R.R.)	Parcel 22	(1)	0	(B)	H2O Water Co.	H2O Water Co.
Magma Ranch	Parcel 23	(1)	0	(C)	0	\$0
Totals				\$9,451,816	125,603,356	\$471,01

(1) PAD has been approved, engineering has commenced & builders are performing due diligence.

(2) PAD has been approved, engineering and plats have been approved, subdivision under construction & model homes are open.
Homes are being sold.

(3) Withdrawn from application

(4) Lot splits & Wildcat subdivisions. Homes being sold & Occupied

(5) This amount does not include hook-up fees paid to date.

(A) Served by the engineering and construction of the Morning Sun Farms Lift-Station, 12" San Tan water line, San Tan Heights well

Total cost of approximately \$407,858

(B) Served by the engineering and construction of the Pecan Creek WWTP, Vineyard Rd. Lift-station, Circlecross wells 1 & 2,
Vineyard road water line, Circle cross water plant

Total cost of approximately \$3,355,211

(C) Served by the engineering and construction of the Heritage Road & Felix Road water & Wastewater lines, Section 11 WWTP
expansion, Rickie well, Rickie waterplant #1 and Cooper Road waterline.

Total cost of approximately \$3,620,334

(D) Served by the engineering and construction of the Bella Vista water lines and well expansions.

Total cost of approximately \$1,938,413

(E) Served by the construction of the Mystic Lake wells #1 & #2 and the Mystic Lake Water plant #1.

Total cost of approximately \$130,000

(F) Served by the existing facilities in the Johnson Ranch Community. Water lines exist on two sides.